



Friends of the Clearwater

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Forest Supervisor
Nez Perce and Clearwater National Forests
903 3rd Street
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SENT VIA EMAIL comments-northern-nezperce@fs.fed.us and Via US Mail (with attachments)

Dear Supervisor Probert:

These comments are on behalf of Friends of the Clearwater on the July 2 scoping letter (SL) for several projects. We notice the comment period was extraordinarily short and communicated that to Kurt Steele who denied any extension of time. Our office did not receive the letter until well after the July 4th holiday. This is yet another attempt by the agency to shortchange public involvement in our national forests. This doesn't make diligent efforts to involve the public in implementing NEPA. Serious problems exist with some of the proposals and they don't seem to fit into a categorical exclusion (CE).

Suction Dredging Proposals

A general concern with these four proposals—Lucky Strike (which also involves other mining as well), Oro Vega, Richardson and Stickley, aside from the obvious impacts, is whether any of them operated illegal last year without all the proper permits. All of these are not in the area approved for suction dredge mining in the 2016 EA. If any of these proponents did so, then the Forest Service is rewarding illegal behavior by making those actions legal. That is intolerable.

We also lay out problems with the proposals as they are in excess of what has been approved for the South Fork drainage. It is irresponsible and illegal for the Forest Service to try and approve these proposals with a CE as the determination has already been made that these projects have adverse impacts on fisheries. We expect better from the agency.

Lastly, each of the suction dredging proposals, except Lucky Strike, has a CE checklist that is found on the Forest Service website. Each of those checklists alleges there will be no significant impact on the fisheries. That can't be determined without consultation and further analysis. The adverse effect on steelhead is documented by NOAA/NMFS in letters to the Idaho Department of Water Resource's (IDWR). These letters demonstrate that the checklists prepared by the Forest Service are in serious error.

Lucky Strike Placer

This proposal cannot meet the requirements of a CE for the reasons listed below:

- The extraordinary circumstances surrounding listed fish species, specifically steelhead (Leggett Creek is listed as critical habitat) and bull trout (Leggett Creek is listed as a historic stronghold and has high habitat potential for the species, see map 33a of the South Fork Assessment). Regarding steelhead, NOAA/NMFS has concluded in a June 25, 2018 letter to Idaho Department of Water Resources (IDWR) on what appears to be a similar proposal encompassing the same area¹ that it “would result in adverse effects on Snake River Basin steelhead and spring/summer Chinook salmon, and their habitat in Leggett Creek.”
- The Forest Service has already concluded that suction dredge mining has impacts on listed fish and prepared one EIS and one EA to that effect. The permits on the main stem South Fork were limited to reduce negative impacts to steelhead and other fish species. Indeed, a take permit was issued for the Forest Service’s recent decision only because of the limited number of dredgers and mitigation requirements specific to the main stem South Fork. This proposal is in excess of what was approved.
- The Biological Assessment and Biological Opinion were for the main stem South Fork Clearwater only and don’t reflect habitat conditions in tributaries like Leggett Creek. As noted above, numbers of dredges operating on the South Fork were limited yet last year that number was exceeded with little consequence for those in violation. The Forest Service knows this well, yet is proceeding with this proposal anyway.

This proposal also includes the new construction of two ATV trails and one road, according to the map. Calling the routes to Leggett ATV trails rather than roads does not change the harm done from this activity. The materials on the website about this proposal are inconsistent. The text on page 10 of the Lucky Strike Small NEPA Project Description states there will be no road construction or no tree cutting. That is not what the scoping letter and map indicate. The scoping letter suggests—new road and trail construction or pad construction-- could entail tree cutting, as it “may be necessary” for the project. The map shows that a new road segment, that doesn’t appear to be needed, and new ATV trails, which have impacts like roads, would be built. Presumably this would include logging/felling in RHCAs and that is inconsistent with PACFISH requirements. See MM1 and MM2.

We are also told brush cutting would occur to create a 75 foot by 75-foot area. Further, at least one portions of one of the supposedly existing routes to the various exploration sites is not part of the Forest Service road or trail system.

The claimant is supposed to stop work if listed or proposed endangered or threatened species (including sensitive species) occurs or cultural resources are encountered; yet there is no indication that the claimant has any knowledge of fisheries, wildlife biology, botany, or archaeology at all. How are these stipulations meaningful? Further, has clearance work been done in this area?

Again, a CE is not sufficient. An environmental assessment, at a minimum, is needed. Given what has happened the past year on the South Fork (attached), the agency needs to redo its earlier EA, make it an EIS, and analyze the impacts of the illegal mining and projected illegal mining.

¹ This current proposal is actually two proposals, one for suction dredge mining and the other for other types of mining. It appears that the approval granted for suction dredging by IDWR encompasses this proposal, but that IDWR approval is even larger. See attached materials on the enclosed memory stick.

The cumulative impacts of nearby projects must be considered. The Oro Vega proposal included in this EA, one that even IDWR rejected as being insufficient, is also on Leggett Creek. Simply put, these mining proposals have cumulative impacts.

There is considerable science on the impacts of suction dredge mining and sediment on fish and species upon which fish depend. We have enclosed electronic copies of several studies that demonstrate the problems with activities that produce or release sediment, which suction-dredge mining does.

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

Activity or facilities that are "reasonably incident" will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are "reasonably incident" would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. How do two separate proposals, combined into one, fit into this requirement?

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System "to regulate their occupancy and use to preserve the forest thereon from destruction." Equally important, the principle has been articulated by the 9th Circuit Court in United States v. Richardson, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks enough information to make that determination. The question must be asked, "Has the claimant made the discovery of a "valuable mineral deposit" on these claims?" (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (Ranchers Exploration v. Anaconda 248 F. Supp. 708, 731 (D. Utah 1965)). "[L]ocation is the act or series of acts whereby the boundaries

of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (Cole v. Ralph, 252 U.S. 286, 294-96 (1920)).

In essence, the Forest Service is proposing to approve the project (actually two projects) prior to any real analysis and leaving specific details to a later date. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Oro Vega Placer

Like the Lucky Strike Placer proposal, this proposal cannot meet the requirements of a CE for the reasons listed below:

- The extraordinary circumstances surrounding listed fish species, specifically steelhead (Leggett Creek is listed as critical habitat) and bull trout (Leggett Creek is listed as a historic stronghold and has high habitat potential for the species, see map 33a of the South Fork Assessment). Regarding steelhead, NOAA/NMFS has concluded in a June 25, 2018 letter to Idaho Department of Water Resources (IDWR) on a similar proposal upstream of this proposal that it “would result in adverse effects on Snake River Basin steelhead and spring/summer Chinook salmon, and their habitat in Leggett Creek.”
- Amazingly, even IDWR rejected this very same permit proposal due to concerns over fish habitat. “IDWR concludes that the Applicant’s proposed mining operation will have adverse impacts on fish habitat.” IDWR also concluded Leggett Creek is important fish habitat. (See documents on attached memory stick with hard copy).
- The Forest Service has already concluded that suction dredge mining has impacts on listed fish and prepared one EIS and one EA to that effect. The permits on the main stem South Fork were limited to reduce negative impacts to steelhead and other fish species. Indeed, a take permit was issued for the Forest Service’s recent decision only because of the limited number of dredgers and mitigation requirements specific to the mainstream South Fork. This proposal is in excess of what was approved.
- The Biological Assessment and Biological Opinion were for the main stem South Fork Clearwater only and don’t reflect habitat conditions in tributaries like Leggett Creek. As noted above, numbers of dredges operating on the South Fork were limited yet last year that number was exceeded with little consequence for those in violation. The Forest Service knows this well, yet is proceeding with this proposal anyway.

The claimant is supposed to stop work if listed or proposed endangered or threatened species (including sensitive species) occurs or cultural resources are encountered; yet there is no indication that the claimant has any knowledge of fisheries, wildlife biology, botany, or archaeology at all. How are these stipulations meaningful? Further, has clearance work been done in this area?

Again, a CE is not sufficient. An environmental assessment, at a minimum, is needed. Given what has happened the past year on the South Fork, the agency needs to redo its earlier EA, make it an EIS, and analyze the impacts of the illegal mining and projected illegal mining.

The cumulative impacts of nearby projects must be considered. The Lucky Strike proposal included in this scoping letter is also on Leggett Creek. Simply put, these mining proposals have cumulative impacts.

There is considerable science on the impacts of suction dredge mining and sediment on fish and species upon which fish depend. Included in the memory stick enclosed in the hard copy are several studies that demonstrate the problems with activities that produce or release sediment.

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

Activity or facilities that are "reasonably incident" will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are "reasonably incident" would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development.

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System "to regulate their occupancy and use to preserve the forest thereon from destruction." Equally important, the principle has been articulated by the 9th Circuit Court in United States v. Richardson, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks enough information to make that determination. The question must be asked, "Has the claimant made the discovery of a "valuable mineral deposit" on these claims?" (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (Ranchers Exploration v. Anaconda 248 F. Supp. 708, 731 (D. Utah 1965)). "[L]ocation is the act or series of acts whereby the boundaries

of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (Cole v. Ralph, 252 U.S. 286, 294-96 (1920)).

The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Richardson Suction Dredging

Like the Oro Vega and Lucky Strike proposals in this scoping letter, this proposal cannot meet the requirements of a CE for the reasons listed below:

The extraordinary circumstances surrounding listed fish species, specifically steelhead and bull trout. Red River is critical habitat for both species. Regarding steelhead, NOAA/NMFS has concluded in a letter dated June 25, 2018 letter to Idaho Department of Water Resources (IDWR) that it “would result in adverse effects on Snake River Basin steelhead and spring/summer Chinook salmon, and their habitat in the South Fork Clearwater River (SFCR) and two of its headwater tributaries, the American and Red Rivers.”²

- The Forest Service has already concluded that suction dredge mining has impacts on listed fish and prepared one EIS and one EA to that effect. The permits on the main stem South Fork were limited to reduce negative impacts to steelhead and other fish species. Indeed, a take permit was issued for the Forest Service’s recent decision only because of the limited number of dredgers and mitigation requirements specific to the main stem South Fork. This proposal is in excess of what was approved.
- The Biological Assessment and Biological Opinion were for the main stem South Fork Clearwater only and don’t reflect habitat conditions in tributaries like Red River. As noted above, numbers of dredges operating on the South Fork were limited yet last year that number was exceeded with little consequence for those in violation. The Forest Service knows this well, yet is proceeding with this proposal anyway.

The claimant is supposed to stop work if listed or proposed endangered or threatened species (including sensitive species) occurs or cultural resources are encountered; yet there is no indication that the claimant has any knowledge of fisheries, wildlife biology, botany, or archaeology at all. How are these stipulations meaningful? Further, has clearance work been done in this area?

Again, a CE is not sufficient. An environmental assessment, at a minimum, is needed. Given what has happened the past year on the South Fork, the agency needs to redo its earlier EA, make it an EIS, and analyze the impacts of the illegal mining and projected illegal mining.

The cumulative impacts of nearby projects must be considered. The Stickley proposal included in this scoping letter is also on Red River. Simply put, these mining proposals have cumulative impacts.

² The proposals by Richardson and Stickley are both in Red River.

There is considerable science on the impacts of suction dredge mining and sediment on fish and species upon which fish depend. Included in the memory stick enclosed in the hard copy are several studies that demonstrate the problems with activities that produce or release sediment.

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (*Havasupai Tribe v. U.S.*, 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also *Pacific Rivers Council v. Thomas*, 873 F.Supp. 365 (D. Idaho 1995); *Pacific Rivers Council v Thomas*, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

Activity or facilities that are "reasonably incident" will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are "reasonably incident" would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development.

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System "to regulate their occupancy and use to preserve the forest thereon from destruction." Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), cert. denied. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks enough information to make that determination. The question must be asked, "Has the claimant made the discovery of a "valuable mineral deposit" on these claims?" (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (*Ranchers Exploration v. Anaconda* 248 F. Supp. 708, 731 (D. Utah 1965)). "[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim." (*Cole v. Ralph*, 252 U.S. 286, 294-96 (1920)).

The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Stickley Suction Dredging

Like the Oro Vega, Lucky Strike, and Richardson proposals in this scoping letter, this proposal cannot meet the requirements of a CE for the reasons listed below:

- The extraordinary circumstances surrounding listed fish species, specifically steelhead and bull trout. Red River is critical habitat for both species. Regarding steelhead, NOAA/NMFS has concluded in a letter dated June 25, 2018 to Idaho Department of Water Resources (IDWR) that it “would result in adverse effects on Snake River Basin steelhead and spring/summer Chinook salmon, and their habitat in the in Red River.”³
- The Forest Service has already concluded that suction dredge mining has impacts on listed fish and prepared one EIS and one EA to that effect. The permits on the main stem South Fork were limited to reduce negative impacts to steelhead and other fish species. Indeed, a take permit was issued for the Forest Service’s recent decision only because of the limited number of dredgers and mitigation requirements specific to the main stem South Fork. This proposal is in excess of what was approved.
- The Biological Assessment and Biological Opinion were for the main stem South Fork Clearwater only and don’t reflect habitat conditions in tributaries like Red River. As noted above, numbers of dredges operating on the South Fork were limited yet last year that number was exceeded with little consequence for those in violation. The Forest Service knows this well, yet is proceeding with this proposal anyway.

The claimant is supposed to stop work if listed or proposed endangered or threatened species (including sensitive species) occurs or cultural resources are encountered; yet there is no indication that the claimant has any knowledge of fisheries, wildlife biology, botany, or archaeology at all. How are these stipulations meaningful? Further, has clearance work been done in this area?

Again, a CE is not sufficient. An environmental assessment, at a minimum, is needed. Given what has happened the past year on the South Fork, the agency needs to redo its earlier EA, make it an EIS, and analyze the impacts of the illegal mining and projected illegal mining.

The cumulative impacts of nearby projects must be considered. The Stickley proposal included in this scoping letter is also on Red River. Simply put, these mining proposals have cumulative impacts.

There is considerable science on the impacts of suction dredge mining and sediment on fish and species upon which fish depend. Included in the memory stick enclosed in the hard copy are several studies that demonstrate the problems with activities that produce or release sediment.

It should be emphasized the agency's duties under the ESA are not overridden by any “rights” the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: “of course, the Forest Service would

³ The proposals by Richardson and Stickley are both in Red River.

have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns.” (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

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The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development.

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System “to regulate their occupancy and use to preserve the forest thereon from destruction.” Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks enough information to make that determination. The question must be asked, “Has the claimant made the discovery of a “valuable mineral deposit” on these claims?” (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (Ranchers Exploration v. Anaconda 248 F. Supp. 708, 731 (D. Utah 1965)). “[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (Cole v. Ralph, 252 U.S. 286, 294-96 (1920)).

The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

North Fork Ponderosa

This is not a project that can be approved with a CE because of the impact on the Pot Mountain and Mallard Larkins Inventoried Roadless Areas. The 96 acres of roadless cutting⁴ don't appear to be consistent with the 2001 Roadless Rule and even the Idaho Roadless rule. This proposal is not within any of the WUI areas identified in the Idaho rule.

In any case, logging (cutting) inside a roadless area cannot be approved by a CE. An EIS is usually needed. Courts have ruled the decision to harvest timber on a previously undeveloped tract of land is an irreversible and irretrievable decision, which could have serious environmental consequences. See *Smith v. U.S. Forest Service*, 33 F.3d 1072, 1077-79 (9th Cir. 1994); *National Audubon Socy v. U.S. Forest Service*, 4 F.3d 832, 842 (9th Cir. 1993); *Lands Council v. Martin*, 529 F.3d 1219, 1230-32 (9th Cir. 2008). Other court cases have also held the same thing. *California v. Block*, *Tenakee Spring v. Block*, and *ICL v. Mumma* also direct site-specific analysis for roadless area development.

In other words, this decision to incrementally develop an inventoried roadless area is a major federal action. It requires the preparation of an EIS. Even if we were to accept that an EA was sufficient for this project, the agency proposes to prepare a CE! For example, the Forest Service has a proposal to log in both the Pot Mountain and Mallard Larkins Roadless Areas (see the attached memory stick). The cumulative impacts of those proposals must be evaluated.

The Clearwater National Forest Plan (pages II-20 and II-21) requires that before entry into roadless areas occurs, a detailed area analysis, usually done in an EIS, must be prepared. "These analyses will meet NEPA requirements," according to the plan. The six specific forest plan requirements of the analysis include compressive transportation planning, integrated resource management direction, an assessment of cumulative impacts over 20-50 years, monitoring and feedback, an implementation schedule for various resources activities, and a decision point for inventoried roadless areas on scale of development or nondevelopment for the planning period. None of this is mentioned in the scoping letter. This is a clear violation of the Forest Plan.

The simple matter of fact is the Forest Service is trying to get way with incremental development and ignore cumulative impacts and connected actions. That violates the Forest Plan and NEPA. Agency rules require that an EIS be done. NEPA procedures require that environmental information is available to public officials and citizens before decisions are made . . . 40 C.F.R. § 1500.1(b). NEPA also requires that the agency take a hard look at the effect of Project activities. A CE is inadequate for disclosing the impacts of logging and cutting in an inventoried roadless area. See *Kleppe v. Sierra Club*, 427 U.S., 390 (1976); *California v. Block*, 690 F.2d 753 (9th Cir. 1982); and *Save the Yaak Committee v. Block*, 840 F. 2d 714 (9th Cir. 1988).

In *Lands Council v. Martin*, 529 F.3d at 1230-32 the court determined there are at least two separate reasons why logging in roadless areas is environmentally significant so that its environmental consequences must be considered. First, roadless areas have certain attributes that must be analyzed, such as water resources, soils, wildlife habitat, and recreation opportunities. These attributes possess independent environmental significance. Second, roadless areas are significant because of their potential for designation as wilderness areas under the Wilderness Act of 1964.

The second point is crucial because the Forest Service claims that Middle Fork Face, on the Nez Perce and Clearwater National Forests, no longer has roadless characteristics. The areas in question are pasted below. (See also the enclosed memory stick):

⁴ The maps are not detailed enough to determine what parts of these units might be inside or outside of the inventoried roadless areas.



Forest Service Photo

If that is sufficient to destroy roadless characteristics, what about 96 acres of cutting that will leave stumps, so that the effect would be no different than logging? The Forest Service maintained that roadless characteristics were destroyed in an area in *Kettle Range Conservation Group v. USFS*, 971 F. Supp 480 (DCt. OR, June 17, 1997) that old stumps do as well. The Forest Service prevailed on that issue.

Interestingly, the Forest Service falsely claims that this area from the Orogrande Timber Sale still retains wilderness characteristics (Nez Perce and Clearwater National Forests, see also the enclosed memory stick):



Photo courtesy Alpha 1 Photography

The Forest Service did not disclose logging in roadless areas in the scoping letter. Failing to do so violates NEPA because it does not disclose to the public that work in roadless areas are at issue, and NEPA involves disclosing high-quality information to the public. The Forest Service's own regulations requires the scoping document to identify potentially significant issues, yet the scoping document failed to discuss the work done in roadless areas. Roadless areas may very well present extraordinary circumstances, and the Forest Service recognizes so in its regulations. The quality of analysis on impacts to roadless has degraded over the past decade, as indicated in the roadless report that we have included.

In summary, the FS must evaluate the impacts to the roadless area from the cutting. Such an analysis needs to be done in an EIS, or, if the proposal would not affect wilderness characteristics or potential, an EA. A CE is not sufficient.

Unmanaged, roadless areas provide important habitat. The Summary of Scientific Findings for the Interior Columbia Basin Ecosystem Management Project (PNW-GTR-385) found that undeveloped, roadless areas are important for providing habitat for native fish and water quality; are economically valuable to society; and are in relatively good ecological condition.

"Because roads crisscross so many forested areas in Eastside (Columbia Basin), existing roadless regions have enormous ecological value. Existing roadless regions offer important sanctuary. Roadless regions constitute the least-human-disturbed forest and stream systems, the last reservoirs of ecological diversity, and the primary benchmarks for restoring ecological health and integrity." (Rhodes et al. 1994).

The scoping letter fails to consider the importance of roadless areas in that light. Instead, it is as if the roadless areas are targeted because of some ill-informed belief that they need more manipulation and/or corrective action than do roaded areas. In sum, the impacts on the roadless area/proposed wildernesses including the overt "trammeling" of this area by agency-ignited fire, need to be evaluated.

For example, wildlife and plant species have adapted to late summer and fall fires. Spring burning is not mimicking natural processes, and wildlife have not evolved to withstand such impacts. The Forest Service admits as much, "Since most natural fires (wildland fire for resource benefits (WFU) or unwanted wildland fire) occur in late summer to fall, prescribed burning in the spring presents a greater risk to species that are actively growing at that time." (See attached).

Spring burning affects plants very differently than in the late summer/fall. In spring, plants are in different stages of getting ready to put all their energy into growth and reproduction, potentially affecting each species differently, as opposed to in fall when most have already produced seed and are dormant. Similarly, effects on tree roots and fungi are also important issues the scoping letter totally ignores. Almost all of the burns are planned for spring burning, which is not when burns naturally occur in the area.

Agency-ignited prescribed fire cannot come close to meeting the burn characteristics that would have naturally occurred. We encourage you to use your extant natural fire policy in the area to allow natural fire ignitions to play their role even more. That is the only way for a meaningful policy to be ecologically sound. Indeed, it is supposedly the policy in the North Fork Clearwater. For example, rather than proposing extensive human-ignited fire, allowing natural fire to burn, as has been done in the Selway-Bitterroot Wilderness, is a better option. The Forest Service itself claims that in the Selway-Bitterroot Wilderness, the landscape is now heterogeneous after some 35 years of a natural fire policy. The North Fork fire policy has been in place for nearly 25 years.

The biggest problem with this project is that the determination of the need is not based upon the latest science. For example, the assumption that fuel amounts are driving fire behavior is wrong. Scientists have discovered that CLIMATE not fuel amounts is the main determinant of fire severity.

This corresponds with numerous other studies that show fire severity is a function of climate in the northern Rockies. We refer you to the excellent book, Wildfire: A Century of Failed Policy which has already been provided to your office by Friends of the Clearwater.

Baker and Ehle, 2001 (Baker, William L. and Donna Ehle, 2001. Uncertainty in surface-fire history: the case of ponderosa pine forests in the western United States. *Can. J. For. Res.* 31: 1205–1226 2001 attached) present theory and empirical results that suggest that fire-history data have uncertainties and biases when used to estimate the population mean fire interval or other parameters of the fire regime. In other words, they debunk the myth that ponderosa pine types in the northern Rockies are like those in the Southwest. From their Abstract:

Present understanding of fire ecology in forests subject to surface fires is based on fire-scar evidence. We present theory and empirical results that suggest that fire-history data have uncertainties and biases when used to estimate the population mean fire interval (FI) or other parameters of the fire regime. First, the population mean FI is difficult to estimate precisely because of unrecorded fires and can only be shown to lie in a broad range. Second, the interval between tree origin and first fire scar estimates a real fire-free interval that warrants inclusion in mean-FI calculations. Finally, inadequate sampling and targeting of multiple-scarred trees and high scar densities bias mean FIs toward shorter intervals. **In ponderosa pine (*Pinus ponderosa* Dougl. ex P. & C. Laws.) forests of the western United States, these uncertainties and biases suggest that reported mean FIs of 2–25 years significantly underestimate population mean FIs, which instead may be between 22 and 308 years.** We suggest that uncertainty be explicitly stated in fire-history results by bracketing the range of possible population mean FIs. Research and improved methods may narrow the range, but there is no statistical or other method that can eliminate all uncertainty. Longer mean FIs in ponderosa pine forests suggest that (i) surface fire is still important, but less so in maintaining forest structure, and (ii) some dense patches of trees may have occurred in the pre-Euro-American landscape. Creation of low-density forest structure across all parts of ponderosa pine landscapes, particularly in valuable parks and reserves, is not supported by these results. (emphasis added).

In other words, even in the ponderosa pine stands of the Clearwater, have not been affected by past fire suppression to the extent as the Forest Service claims. Other research shows that the high frequency low intensity fire regime ascribed to ponderosa pine in the southwest is not the model here (see for example Baker et al. 2007. Fire, fuels and restoration of ponderosa pine-Douglas fir forests in the Rocky Mountains, USA. *J. Biogeogr.* (2007) 34: 251-259 and Pierce, Jennifer L. Grant A. Meyer and A.J. Timothy Jull. 2004. Fire-induced erosion and millennial-scale climate change in northern ponderosa pine forests. *Nature* Vol. 432 87-90.).

Our knowledge of past conditions is limited. Hayward, in a Forest Service publication, indirectly addresses these topics (Hayward 1994, Hayward, Gregory D., 1994. Information Needs: Great Gray Owls. Chapter 17 *In*: Hayward, Gregory D., and Jon I Verner, 1994. Flammulated, Boreal, and Great Gray Owls in the United States: A Technical Conservation Assessment. USDA Forest Service General Technical Report RM-253):

Despite increased interest in historical ecology, scientific understanding of the historic abundance and distribution of montane conifer forests in the western United States is not sufficient to indicate how current patterns compare to the past. In particular, knowledge of patterns in distribution and abundance of older age classes of these forests is not available.

...Current efforts to put management impacts into a historic context seem to focus almost exclusively on what amounts to a snapshot of vegetation history—a documentation of forest conditions near the time when European settlers first began to impact forest structure. ...The value of the historic information lies in the perspective it can provide on the potential variation... I do not believe that historical ecology, emphasizing static conditions in recent times, say 100 years ago, will provide the complete picture needed to place present conditions in a proper historic context. Conditions immediately prior to industrial development may have been extraordinary compared to the past 1,000 years or more. Using forest conditions in the 1800s as a baseline, then, could provide a false impression if the baseline is considered a goal to strive toward.

Fire suppression apparently has done little if anything to change the natural occurrence of lethal fires in this area. The 1910 and 1934 Pete King fires burned well before fire suppression efforts began and/or were effective. Hence, stand-replacing fires (or, as the Forest Service euphemistically calls them, “catastrophic fires”) are normal here and occur without the “help” of human fire suppression efforts. No fire year in the recorded past has come even close to approaching the size and intensity of the fires of 1910 or 1934. In fact, fire suppression may not have had much of an impact on the forests in this part of the world anyway. The time fire suppression supposedly became effective (circa 1950) to about the mid 1980s corresponds with a wetter period in the Northern Rockies. There is a debate whether fire suppression has even been effective in the Northern Rockies. It is likely many fires put out in that time frame may not have done much anyway during those years.

As such, the assumptions in the scoping letter are not based upon the latest science. Furthermore, the scoping letter is based upon faulty premises. On one hand the Forest Service claims natural fire kept the area heterogeneous. Then the scoping letter leads one to believe that the resulting vegetative structure following the big fires of the early 1900s have left the landscape with an unnaturally high mid seral component.

The agency view is inconsistent. In other words, if the research the agency has relied on in the past is right about the normalcy of stand-replacing fire in the Clearwater, then it is not only part of this system, but a dominant part. If these fires were, in fact, common then the vegetation they created is “natural” including the successional stages. It would stand to reason that there is no real justification to manipulate these successional stages because of 60 years of fire suppression (which may not have been very successful) as the current vegetative condition will have little influence on stand-replacing fires. These fires will burn regardless and reset the clock, so to speak. Thus, the desire to meet some goals of early, late, and mid seral vegetation through manipulation are shortsighted as stand-replacing fire, which is normal and a relatively frequent visitor to the Clearwater, is the trump card in determining seral condition.

Obviously, this proposal has been proposed with the “equilibrium” view of fire ecology. This view holds that frequent, low-intensity surface fires maintained some condition. A contrasting “nonequilibrium” view suggests that many forest ecosystems are subject to unpredictable catastrophic disturbances that dramatically alter these ecosystems. There is strong evidence of such events before EuroAmerican influence. The more scientists learn, the more the nonequilibrium view holds sway over the equilibrium view.

We do not know what influence, if any, recent fire suppression has played in the North Fork drainage. Any proclamation otherwise is specious at best. Baker and Ehle’s research questions the use of fire scar data which would suggest that fire intervals here are so stochastic that statements that this area is somehow out of whack are groundless or that we lack the data to make such a determination. Also, the number of fire starts provides little information as to whether fire would actually burn.

Thus, there is a question whether these forests have missed, in any meaningful way, fire cycles, assuming such a thing even exists. Given global warming, such an assumption is probably erroneous anyway. Indeed, the whole concept of historic ranges is thrown out the window by global warming.

The fact that most fires were suppressed is not meaningful, in and of itself. The agency's experience with prescribed fires in the North Fork shows that it is not always easy to get fires to burn, even in late summer. Over the past few years, your prescribed fires have not burned as vigorously as desired during some years or more vigorously in one or two others. As an example of the latter, the following shows a prescribed burn in Weitas Creek that killed large legacy trees (larch and others) that were intended to be retained:



FOC File Photo

Regardless, conditions for mild underburns are very infrequent. The agency's burn window is very narrow because conditions must be just right, not too hot or dry and not too cool. This suggests that these kinds of fires naturally play a minor role under the current climatic conditions.

The agency needs to ask some questions. Will any late-seral or old-growth forests be burned? If so, will they be changed so they no longer provide the habitat needed by species who inhabit late-seral forests? What is the impact on old growth habitat from this proposal?

Many adverse consequences to soil, ecological processes, wildlife, and other elements of the natural environment are associated with logging, including thinning. (Ercelawn, 1999; Ercelawn, 2000.) For

example: Salvage or thinning operations that remove dead or decayed trees or coarse woody debris on the ground will reduce the availability of forest structures used by fishers and lynx. (Bull et al., 2001.)

The FS should firmly establish that the species that exist, or historically are believed to have been present in the analysis area still have viable populations. Since Forest Plan monitoring efforts have failed in this regard, it must be a priority for project analyses. Identification of viable populations is something that must be done at a specific geographic scale. The analysis must cover a large enough area to include a cumulative effects analysis area that would include truly viable populations. Analysis must identify viable populations of MIS, TES, at-risk, focal, and demand species of which the individuals in the analysis area are members in order to sustain viable populations.

The fact that the Clearwater National Forest offices have not adequately monitored the population trends of its old-growth management indicator species (MIS) as required by the Forest Plan bears repeating. Considering potential difficulties of using population viability analysis at the project analysis area level (Ruggiero, et. al., 1994), the cumulative effects of carrying out multiple projects simultaneously across the Forest makes it imperative that population viability be assessed at least at the forest-wide scale (Marcot and Murphy, 1992). Also, temporal considerations of the impacts on wildlife population viability from implementing something with such long duration as a Forest Plan must be considered (id.) but this has not been done. It is also of paramount importance to monitor population trends (as mandated by the Forest Plan) during the implementation of the Forest Plan in order to validate assumptions used about long-term species persistence i.e., population viability (Marcot and Murphy, 1992; Lacy and Clark, 1993).

Unfortunately, region-wide the FS has failed to meet Forest Plan old-growth standards, does not keep accurate old-growth inventories, and has not monitored population trends in response to management activities as required by Forest Plans and NFMA (Juel, 2003).

State-of-the-art conservation biology and the principles that underlie the agency's policy of ecosystem management dictate an increasing focus on the landscape-scale concept and design of large biological reserves accompanied by buffer zones and habitat connectors as the most effective (and perhaps only) way to preserve wildlife diversity and viability (Noss, 1993).

For every project proposal, it is important that the results of past monitoring be incorporated into planning. All Interdisciplinary Team Members should be familiar with the results of all past monitoring pertinent to the project area, and any deficiencies of monitoring that have been previously committed to. For that reason, we expect that the following be included in the NEPA documents or project files:

- A list of all past projects (completed or ongoing) implemented in the proposed project area watersheds.
- The results of all monitoring done in the project area as committed to in the NEPA documents of those past projects.
- The results of all monitoring which has been done in the proposed project area as a part of the Forest Plan monitoring and evaluation effort.
- A description of any monitoring, specified in those past project NEPA documents or the Forest Plan for proposed project area, which has yet to be gathered and/or reported.

Also, frequent burning may not be in the best interest of long-term health of the area. Experience in the North Fork shows that frequent burns can deplete soil nutrients. The Forest Service routinely burned in and around Canyon and Kelly Forks in recent past decades with helicopters. Dr. Jim Peek has been doing research on this in the Lochsa as well. Again, climate is the driver of fires in this region. Adherence to a strict fire regime concept is not supported by the latest science.

The cumulative impacts from past burning need to be assessed. The Forest Service has proposed burning throughout the North Fork in various projects. We have attached various comments on several of those burning proposals.

Regardless, our on-the-ground review of the area shows little ponderosa pine in the area. While the maps in the SL were very small scale, we did our best to place the units on topographic maps, photos of which are also included. Our photo documentation shows a large number of units. Ponderosa pine, overall, are not common and likely never were. To suggest they were once dominant is fallacious given the current stands. Douglas fir, a fire-resistant tree like ponderosa, makes up what appears to be a majority of the trees. Western larch and cedar are also found. These are and were mixed conifer stands, though they did have ponderosa in some of them, it was likely never dominant. Further, Unit 4 appears to be mainly bracken fern (see photo 6895). Other photos show stands of brush intermixed with sparse conifers. Finally, at least one of the units overlaps with a BioControl site, documented in what we have provided.

The Clearwater is not the Gila National Forest. Yet, that is what the agency seems to want to create here.

In sum, this proposal does not fit in with the landscape or vegetation in the Clearwater. Ponderosa pine are a minor component of the Clearwater National Forest and always have been. It could have serious negative impacts on the two roadless areas.

Other Mining Proposals

We have two general concerns.

- What percentage of the past proposals for mining approved under a CE on the Nez Perce and Clearwater National Forests over the past 10 years actually took place within the year window?
- What kind of monitoring is done? The attached photos and one below show significant damage to riparian areas in Little Mallard Creek:



FOC File Photo

Blanco Creek Exploration

A CE is inadequate for this proposal. The route to the exploration site is not listed by the Forest Service as a system or logging road. It is listed as a trail open seasonally to vehicles less than 50 inches wide (see attached from the travel plan the map of the current condition). As such, it is a mischaracterization of the existing condition.

The scoping letter is not clear whether this would entail tree cutting. "Access Road B is the preferred route as it would require only minor rehabilitation and no tree removal." SL and 3. Yet, page 4 mentions major excavation and tree fallers. Stream crossings are supposed to be armored, but recent exploration actions in the Red River Ranger District show damage to wetlands as can be seen in the attached files.

The claimant is supposed to stop work of cultural resources are uncovered, yet there is no indication that the claimant has any knowledge of archaeology at all. How is this stipulation meaningful? Further, has clearance work been done in this area?

Given these issues, a CE is not sufficient. An environmental assessment is more appropriate.

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

Activity or facilities that are "reasonably incident" will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are "reasonably incident" would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. Sixteen trenches, new roads in RHCAs, and suction dredging in the stream do not fit in with these requirements.

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System "to regulate their occupancy and use to preserve the

forest thereon from destruction.” Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks crucial information. The question must be asked, “Has the claimant made the discovery of a “valuable mineral deposit” on this claim?” (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (*Ranchers Exploration v. Anaconda* 248 F. Supp. 708, 731 (D. Utah 1965)). “[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (*Cole v. Ralph*, 252 U.S. 286, 294-96 (1920)).

In essence, the Forest Service is proposing to approve the project prior to any real analysis and leaving specific details to a later date. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Siegel Creek Exploration

A CE is inadequate for this proposal because the activity will be taking place within an RHCA. The SL is not clear whether this would entail tree cutting within the RHCA or tree cutting for the access route. Further, the SL does not explain whether the claim extends on the roaded side of Siegel Creek. If so, why would there need to be a bridge and associated road construction across the creek? Recent activity in the Red River Ranger District shows damage to RHCAs as documented in the photos attached to this file.

The claimant is supposed to stop work of cultural resources are uncovered, yet there is no indication that the claimant has any knowledge of archaeology at all. How is this stipulation meaningful? Further, has clearance work been done in this area?

Given these issues, a CE is not sufficient. An environmental assessment is more appropriate.

It should be emphasized the agency's duties under the ESA are not overridden by any “rights” the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: “of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns.” (*Havasupai Tribe v. U.S.*, 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) *cert. denied* 503 U.S. 959 (1992); See also *Pacific Rivers Council v. Thomas*, 873 F.Supp. 365 (D. Idaho 1995); *Pacific Rivers Council v Thomas*, 30 F.3d 1050 (9th Cir 1994) *cert. denied* 115 S.Ct. 1793 (1995)).

The issue of claim validity is important. This is important because the reasonableness of the proposed action needs to be adequately considered for such a proposal.

Activity or facilities that are “reasonably incident” will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are “reasonably incident” would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. Sixteen trenches, new roads in RHCA's, and suction dredging in the stream do not fit in with these requirements.

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System “to regulate their occupancy and use to preserve the forest thereon from destruction.” Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

The scoping letter lacks crucial information. The question must be asked, “Has the claimant made the discovery of a “valuable mineral deposit” on this claim?” (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (*Ranchers Exploration v. Anaconda* 248 F. Supp. 708, 731 (D. Utah 1965)). “[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (*Cole v. Ralph*, 252 U.S. 286, 294-96 (1920)).

In essence, the Forest Service is proposing to approve the project prior to any real analysis and leaving specific details to a later date. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Turner Placer Exploration

A CE is inadequate for this proposal because the activity will be taking place within an RHCA. The SL is not clear whether this would entail tree cutting within the RHCA or tree cutting for the access route. It is clear the access road and the activities would take place within the RHCA, on both side of Moose Creek. Recent activity in the Red River Ranger District shows damage to RHCA's as documented in the photos attached to this file.

The claimant is supposed to stop work of cultural resources are uncovered, yet there is no indication that the claimant has any knowledge of archaeology at all. How is this stipulation meaningful? Further, has clearance work been done in this area?

Given these issues, a CE is not sufficient. An environmental assessment is more appropriate.

It should be emphasized the agency's duties under the ESA are not overridden by any “rights” the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: “of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns.” (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)).

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The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development. Sixteen trenches, new roads in RHCA's, and suction dredging in the stream do not fit in with these requirements.

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System “to regulate their occupancy and use to preserve the forest thereon from destruction.” Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), cert. denied. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence. And, significant disturbance requires more than a simple CE.

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In essence, the Forest Service is proposing to approve the project prior to any real analysis and leaving specific details to a later date. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA, whether it complies with clean water law and policy for ground and surface water and the amount of time this project would take.

Please send us a copy of the plan of operations and any other documents submitted by the applicant for this proposal.

Other

Precommercial Thinning Palouse RD

The purpose of this project is to reduce overstocking in stands that have been logged in the past 15 to 25 years. Do the maps correspond with areas that have been logged in the last 15 to 25 years? Furthermore, the SL maps show some units to be within RHCAs (see the unit on map 2 along Fern Creek). Since RHCAs have not been open to logging for about 25 years, since PACFISH, we find it odd that some of the units are within RHCAs. SL at 32 referring to inclusions. Thus, there is an inconsistency here that needs to be explained. We expect the Forest Service won't conduct any pre-commercial thinning in any RHCA and will modify these proposals. Otherwise, the only conclusions we can reach is that the Forest Service bungled marking and contracting and/or misled the public about applying PACFISH and INFISH buffers in past timber sales. We sincerely hope the Forest Service is not misleading the public now about the geographic scope of these proposals, which are supposed to be on previously logged stands. We await your reply on this matter and would like to talk this over with you.

How did the Forest Service determine that Douglas fir are not desirable species? Where in the Clearwater National Forest Plan is such a determination made? Further, Douglas fir are very fire resistant, contrary to what one is led to believe (see attached).

Any forest condition that is maintained through intense mechanical manipulation is not maintaining ecosystem function. We request detailed disclosure of the historical data used to arrive at the assumptions in the scoping letter. We don't believe the proposed management activities are designed to foster the *processes* that naturally shaped the ecosystem and resulted in a range of natural structural conditions, they are merely designed to create structural conditions at a point in time, which may not even be natural, or create stands that more closely resemble tree farms. Generally, past process regimes are better understood than past forest structure. How are you factoring in fire, insects, tree diseases, and other natural disturbances in specifying the structural conditions you assume to be representative of the historic range?

Many adverse consequences to soil, ecological processes, wildlife, and other elements of the natural environment are associated with logging, including thinning. (Ercelawn, 1999; Ercelawn, 2000.) For example: "Salvage or thinning operations that remove dead or decayed trees or coarse woody debris on the ground will reduce the availability of forest structures used by fishers and lynx." (Bull et al., 2001.) Since this is a thinning project the impacts on lynx must especially be considered. Remember, a confirmed lynx (dead, unfortunately) was found on the Palouse Ranger District.

Please disclose, using tables and maps, the amounts, locations, sizes, and connectivity of all old-growth stands in the project area near the proposed thinning stands, or if any of the thinning stands are in old growth or replacement old growth. Disclose whether it is actual old growth (meets all criteria) or

whether it is “recruitment” old growth. These questions are important as FIA data show that the standard is not being met on the Clearwater National Forest.

Please include in your analysis the possible effects of noxious weed introduction on Sensitive plant populations and other components of biodiversity. Please include in the analysis the results of monitoring of noxious weed infestation from past management actions in this drainage.

We request a careful analysis of the impacts to fisheries and water quality, including considerations of sedimentation, increases in peak flow, channel stability, risk of rain-on-snow events, and increases in stream water temperature, and landslide potential. What impact will the pre-commercial thinning have in RHCA's even if no thinning is supposed to take place there?

Please disclose in the NEPA document the results of up-to-date monitoring of fish habitat and watershed conditions, as required by the Forest Plans. Discuss the actual effectiveness of proposed BMPs in preventing sediment from reaching watercourses in or near the analysis area. What BMP failures have been noted for past projects with similar landtypes? We would like to see a thorough discussion of the BMPs and mitigation measures you would propose. Also, please disclose which segments of which roads in the watersheds to be affected by this proposal will not meet BMPs following project activities. These questions are important because they fit in with Judge Erickson's ruling on the Clearwater in the North Fork Ranger District.

Little Boulder Stream Improvement

This project won't fit under a CE because of cumulative impacts from the Little Boulder Project. We have three concerns with the proposal:

The Forest Service is approving a massive timber sale for the Little Boulder Project and past management has admittedly caused serious damage. Why continue with the damaging actions in the drainage and then put on a bandage?

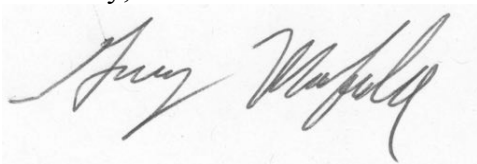
The use of hydraulic equipment near the stream is a cause for concern. While the hydraulic fluid may be biodegradable, the fuel isn't. Even with prevention measures, spills could occur.

In stream work is always a concern. It would be useful for projects of this type (those requiring a 404 permit) for the agency to release a report on what has happened on past projects of this type and any monitoring results. We have made this request before, but the agency has not responded.

Summary

Again, keep us updated on all of these projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Macfarlane", written in a cursive style.

Gary Macfarlane